

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DANIEL EDWARDS, SR., AND FELICIA  
EDWARDS, AS NEXT FRIEND(S) OF  
DANIEL EDWARDS, JR.,

Plaintiffs,

v.

GREENHILL SCHOOL,

Defendant and Cross Plaintiff,

v.

DANIEL EDWARDS SR. AND FELICIA  
EDWARDS, INDIVIDUALLY,

Cross Defendants.

CIVIL ACTION NO. 3:09-cv-00085-N

**DEFENDANT GREENHILL SCHOOL'S MOTION TO DISMISS AND  
BRIEF IN SUPPORT**

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Defendant Greenhill School ("Greenhill") hereby files this motion to dismiss the claims of Plaintiffs Daniel Edwards, Sr. and Felicia Edwards, as next friends of Daniel Edwards, Jr., and its brief in support. Mr. and Mrs. Edwards have failed to secure new counsel as directed by the Court's January 29, 2010 Order, and they cannot prosecute claims on behalf of Daniel Edwards, Jr. *pro se*. As a result, their claims must be dismissed.<sup>1</sup>

**I.  
BACKGROUND**

Plaintiffs are the parents and legal guardians of Daniel Edwards, Jr. ("Daniel Jr."). On December 12, 2008, Mr. and Mrs. Edwards commenced this suit as next friends of Daniel Jr.

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<sup>1</sup> Greenhill has filed cross claims for breach of contract against Daniel Edwards, Sr. and Felicia Edwards in their individual capacities. (Docket No. 11) These claims can be defended *pro se* and are not the subject of this motion.

asserting various claims arising from incidents that allegedly occurred while Daniel Jr. was enrolled as a student at Greenhill.

On April 13, 2009, Plaintiffs' original counsel, Ray Jackson, filed a motion to withdraw as attorney in charge for Plaintiffs (Docket No. 5), which was granted by the Court on April 21, 2009. (Docket No. 6) For five months, Plaintiffs were without counsel. On September 15, 2009, Ms. Edmonds entered her appearance as counsel for Plaintiffs. (Docket No. 12) At the conclusion of Mrs. Edwards' deposition on November 9, 2009, less than two months after making an appearance on behalf of Plaintiffs, Ms. Edmonds advised Greenhill that she had secured the agreement of Plaintiffs to allow her withdrawal.

On November 13, 2009, Ms. Edmonds filed her Motion to Withdraw as Counsel of Record. (Docket No. 23) The same day, Greenhill filed its Conditional Opposition to the Motion to Withdraw, in which Greenhill explained that the withdrawal of Ms. Edmonds would prevent Plaintiffs' claims from proceeding because Mr. and Mrs. Edwards could not pursue Daniel Jr.'s claims *pro se*. (Docket No. 24) Greenhill requested that the Court give Plaintiffs a finite period of time for replacement counsel to make an appearance and that Plaintiffs' claims be dismissed if replacement counsel failed to make an appearance within the time set by the Court.

On January 29, 2010, the Court granted Ms. Edmonds' Motion to Withdraw. (Docket No. 27) The Court gave the Plaintiffs until March 30, 2010 to find new counsel. No new counsel has made an appearance on behalf of Plaintiffs or otherwise contacted counsel for Greenhill.

## **II. DISCUSSION**

When granting Ms. Edmonds Motion to Withdraw, the Court set a March 30, 2010 deadline for Plaintiffs to find new counsel. That deadline has come and gone without the appearance of new counsel.

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Mr. and Mrs. Edwards cannot continue to pursue Daniel Jr.'s claims. A non-attorney parent must be represented by counsel in bringing an action on behalf his or her child. *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2nd Cir. 1990); *Ross v. Lancaster Ind. Sch. Dist.*, No. 3:04-CV-2679-P, 2005 U.S. Dist. LEXIS 1446, 1 (N.D. Tex. Jan. 31, 2005), *accepted by* 2005 U.S. Dist. LEXIS 3681 (Mar. 8, 2005) (Solis, J.); *Martin v. Revere Smelting & Refining Corp.*, No. 3:03-CV-2589-D, 2004 U.S. Dist. LEXIS 6886, 2-4 (Apr. 16, 2004), *accepted by* 2004 U.S. Dist. LEXIS 28259 (May 24, 2004) (Fitzwater, J.); *see also Harris v. Apfel*, 209 F.3d 413, 415 (5th Cir. 2000) (holding that a non-attorney parent may assert *pro se* action on behalf of minor child in Social Security appeal, but implicitly adopting *Cheung* rule barring the representation of a child by a non-attorney parent acting *pro se* in other civil litigation). The appropriate remedy if a non-attorney parent seeks to assert claims of a minor child without the assistance of counsel is dismissal. *Ross*, 2005 U.S. Dist. LEXIS 1446, at 3; *Martin*, 2004 U.S. Dist. LEXIS 6886, at 5.

More than four months have passed since Plaintiffs agreed to allow Ms. Edmonds to withdraw as their counsel. Two months have passed since the Court gave Plaintiffs 60 days to locate new counsel. In the 15 months since this case was filed, Plaintiffs have not taken any discovery, and they are effectively precluded from doing so in the absence of counsel. Rule 41(b) allows a court to dismiss claims for failure to prosecute or for failure to comply with the federal rules or any court order. Because Plaintiffs have failed to prosecute this case, failed to meet the Court's deadline to locate new counsel, and cannot prosecute the claims of their minor child *pro se*, their claims should be dismissed.

DATE: March 31, 2010

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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**ATTORNEYS FOR DEFENDANT  
GREENHILL SCHOOL**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing motion has been served by certified mail, return receipt requested, on this 31st day of March, 2010, as follows:

Daniel Edwards, Sr. & Felicia Edwards,  
as Next Friend(s) of Daniel Edwards, Jr.  
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PLAINTIFFS,  
Daniel Edwards, Sr., and Felicia  
Edwards, as Next Friend(s) of Daniel  
Edwards, Jr.

s/John Franklin Guild